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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,258	03/15/2004	Aaron M. Lamstein	545.44	2246

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EXAMINER

SILBERMANN, JOANNE

ART UNIT PAPER NUMBER

3611

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/801,258
Filing Date: March 15, 2004
Appellant(s): LAMSTEIN, AARON M.

Michael E. Dergosits
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 18 May 2006 appealing from the Office
action mailed 28 February 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims appears on page 7 of the Appendix to the appellant's brief. The minor errors are as follows: the claims appendix should begin on a separate sheet.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. US #4,249,318 in view of Ali, US #6,042,151.

Anderson et al. teach a system for displaying multiple packages comprising segmented pie chart 12 (Figure 4) that identifies characteristics of a single entity (paint color) and color codes each segment of the segmented display to differentiate each characteristic (color) from other characteristics of the display and positions multiple packages spaced apart from the segmented display (Figure 7).

Anderson et al. do not teach each package further exhibiting at least one of the codes, however this is well known in the art. Ali teaches a display for multiple packages wherein each package exhibits at least one code, 24 (Figure 1). The codes are numeric and alphabetic. It would have been obvious to a person having ordinary skill in the art to utilize such a code on each package of Anderson et al. so that the packages may be easily arranged on the shelves.

Also, the examiner takes official notice of paint tubes that include a place on the label or tube showing what color is in the tube. It would have been obvious to include such a place (usually a sticker) on the tubes of Anderson et al. so that if the tubes are removed from the display they can be correctly replaced.

Anderson et al. and Ali do not teach the single entity as being a pet, however the entity is not part of the claimed invention. It would have been obvious to one of ordinary

skill in the art to utilize the system of Anderson et al. (as modified by Ali) when arranging any variety of products.

Anderson et al. and Ali do not teach further dividing the subgroups, however this is considered to be a duplication of a known part and involves only routine skill in the art. It would have been obvious to one of ordinary skill in the art to provide a system that includes two such arrangements of packages if further separation is necessary.

(10) Response to Argument

Regarding the packages exhibiting codes, Applicant argues that the examiner concludes "without any prior art" (page 4 line 17) that this is well known. The examiner has shown, however that Ali teaches packages with codes. Applicant also argues that the color chart of Anderson et al. is not related to applicant's invention, however the color chart of Anderson et al. shows a segmented, coded display, as in applicant's claim 1. Applicant further argues that a person skilled in the art would not combine a color chart for paint with a display for sandpaper. However both are displays that assist a user in choosing the correct product.

Applicant further argues that the instant invention is for use in a store ("for purchase by consumers") and Anderson et al. appears to teach a display of items which are not for sale. However, the intended use of the display (in a store or in an artist's studio) cannot be relied upon for patentability.


(11) Related Proceeding(s) Appendix

Art Unit: 3611


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Joanne Silbermann

Conferees:

CD 

SM 